

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

BROOKLYN COMEDY COLLECTIVE INC,

Plaintiff,

v.

OMHBROOKLYN LLC and EDWARD FARRELL,

Defendant.

Civil Action No. 22-cv-4758

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, BROOKLYN COMEDY COLLECTIVE INC (“**BCC**” or “**Plaintiff**”), by and through its attorneys, Foley & Lardner LLP, for its Complaint against OMHBROOKLYN LLC (“**OMH**”) and EDWARD FARRELL (“**Farrell**,” and together with OMH, the “**Defendants**”), alleges, on knowledge as to its own actions, and otherwise upon information and belief, as follows:

PRELIMINARY STATEMENT

1. This is an action by Plaintiff, Brooklyn Comedy Collective, to prevent and restrain Defendants’ unauthorized and infringing misappropriation of its well-known and distinctive trade name and trademark. BCC has been Brooklyn’s preeminent destination for comedy shows, open-mics, improvisation performances, comedy classes, and more since February of 2018 (BCC’s comedy-related services hereinafter sometimes collectively referred to as “**BCC’s Comedy Services**”). Since that time, BCC has become increasingly prominent in the New York City metropolitan area, producing approximately 2,000 comedy shows and selling over 60,000 tickets. BCC has cultivated a respected reputation around New York City, and especially within Brooklyn, as evidenced by the extensive media coverage that it has received, community engagement, and its long list of A-list comedic acts. Through over four (4) years of continuous and exclusive use of

the name and mark BROOKLYN COMEDY COLLECTIVE and the commonly used abbreviation “BCC” (hereinafter collectively referred to as the “**BROOKLYN COMEDY COLLECTIVE Marks**”), and tireless efforts to establish itself as one of the leading comedy destinations in New York City, Plaintiff has established substantial goodwill within New York and beyond in the BROOKLYN COMEDY COLLECTIVE Marks.

2. Nearly two (2) years after the launch of BCC, Defendant opened the doors to a comedy club on Bedford Avenue in Brooklyn, a mere five (5) minute walk from BCC’s then-location. Upon information and belief, with full knowledge of BCC’s prior trademark rights in the BROOKLYN COMEDY COLLECTIVE Marks for the BCC Comedy Services, Defendants intentionally changed the name of their venue from OLD MAN HUSTLE to BKLYN COMEDY CLUB (BROOKLYN COMEDY CLUB spelled without the vowels in BROOKLYN, pronounced identically), for which it filed U.S. Trademark Application Serial Number 97/086,405 for the same (hereinafter collectively referred to as the “**BROOKLYN COMEDY CLUB Mark**”) in blatant disregard of BCC’s prior rights.

3. Immediately upon learning of numerous instances of customer confusion, BCC repeatedly reached out to Defendants in an effort to amicably come to a resolution concerning OMH’s infringing use of the BROOKLYN COMEDY CLUB Mark. Despite mounting cases of actual confusion, Defendants have, and continue to refuse to, stop using the BROOKLYN COMEDY CLUB Mark for identical comedy shows.

4. To stop consumer confusion, prevent Defendants’ further infringing acts and conduct and their trading on Plaintiff’s favorable reputation and goodwill, Plaintiff hereby asserts claims for trademark infringement, unfair competition and false designation of origin pursuant to Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), and for the related claims of infringement,

and unfair competition under the statutory and common law of New York. Plaintiff seeks injunctive relief to prevent Defendants from using a mark that is nearly identical, or confusingly similar, to Plaintiff's BROOKLYN COMEDY COLLECTIVE Marks.

THE PARTIES

5. Plaintiff, BROOKLYN COMEDY COLLECTIVE INC, is a corporation duly organized under the laws of the state of New York, with its principal place of business located at 167 Graham Avenue, Brooklyn, NY 11206.

6. On information and belief, Defendant, OMHBROOKLYN LLC, is a limited liability company organized under the laws of the state of Delaware with its principal place of business located at 308 Bedford Avenue, Rear, Brooklyn, NY 11249.

7. Upon information and belief, Defendant EDWARD FARRELL is an individual residing in the state of New York, and is the President and Owner of OMHBROOKLYN LLC, and is therefore the driving force behind the OMH business, with a direct financial interest in OMH, as well as ultimate responsibility for the operation of OMH and for any and all infringing acts carried out in the name of OMH.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a), 1338(b), and pursuant to the principles of supplemental jurisdiction under 28 U.S.C. § 1367.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) in that a substantial part of the events giving rise to the claim occurred in this district and in that Defendant may be found in this district.

10. This court has personal jurisdiction over the Defendants in this action by virtue of their acts and omissions which have taken place in the state of New York and in this District, and are designed to, and are, causing substantial confusion and deception among consumers in New York and in this District, and irreparable injury to BCC's valuable reputation, goodwill, trademark, name, and other intellectual property assets in New York. Upon information and belief, Defendant Farrell resides in this district and the business of Defendant OMHBROOKLYN LLC, which he owns and controls, has its principal place of business in Brooklyn, New York, and, upon information and belief, all of its comedy and related performances and other gatherings take place in Brooklyn, New York.

**I. PLAINTIFF'S ADOPTION AND USE OF ITS
"BROOKLYN COMEDY COLLECTIVE" TRADEMARK,
ITS COMEDY SHOW SERVICES, AND ITS FAME AND NOTORIETY**

11. The BROOKLYN COMEDY COLLECTIVE is a comedy venue and service provider established by Philip Markle ("**Markle**") in Brooklyn, New York in 2018, with the mission of not only producing the best comedy-centric performance art in New York City, but also in providing fair pay and an inclusive community for the city's comedic talent.

12. On November 16, 2021, BCC registered a New York State trademark (Reg. No. S25396) for the mark BCC BROOKLYN COMEDY COLLECTIVE under Class 41 for "a comedy club/theater and a school with year-round live shows and classes that trains aspiring comedians in the art of comedy," claiming a date of first use of February 5, 2018, which mark has been active, subsisting, and continuously used since such time. A copy of the Certificate of Registration is annexed hereto and made a part hereof as Exhibit A. The BROOKLYN COMEDY COLLECTIVE New York trademark is described in the registration as follows: "The mark is 'Brooklyn Comedy Collective' which goes by the name 'BCC.' The logo is the capitalized letters BCC in 'Cocogoose'

font which is marketed stand-alone in addition to logo with the ‘BCC’ capitalized letters large letters above three capitalized lines of text that spell the name ‘Brooklyn’ on the first line, all of which are parallel to the larger ‘BCC’ letters, followed by ‘Comedy’ in the second line of text and ‘Collective’ on the third line of text.” A visual representation of the foregoing New York trademark is as follows:



13. BCC has registered trademark rights in the mark BROOKLYN COMEDY COLLECTIVE as described in its New York State registration, its common law rights in the word mark BROOKLYN COMEDY COLLECTIVE, and common law rights in the word mark BCC.

14. Since its inception, BCC has leased physical locations each within a 25 minute radius walking distance from one another. BCC’s first address was located at 579 Metropolitan Ave., Brooklyn, NY 11211. The business then moved in November of 2019 to 58 North 3rd Street, Brooklyn, NY 11211, followed by 167 Graham Avenue, Brooklyn, NY 11206 in June of 2021, where it resides, today.

15. BCC offers, in part, stand-up, improvisation, and open-mic comedy performances. Since its inception, BCC has hosted approximately 2,000 shows—all of which occurred in venues located in Brooklyn. That said, BCC has performed all over New York in connection with its touring and guest show production, such as at Brooklyn Borough Hall and guest shows at Union Hall in Gowanus, Brooklyn.

16. In addition to daily comedy performances, BCC has also produced and hosted three in-person comedy showcases wherein comedians performed back-to-back acts for industry insiders such as casting directors, talent agents, and fellow comedians. The first showcase took place on October 30, 2018, the second on January 21, 2020, and the third on October 19, 2021, each taking place in theaters located in Brooklyn.

17. Although BCC offers performances akin to a traditional comedy theater, its service offering includes far more. BCC also offers instructional comedy classes to approximately 1,500 students per year. In addition, Plaintiff's business performs corporate workshops in the field of comedy with major companies, including Google, Ernst & Young, American Express, YouTube, Columbia University, the New York Fashion Institute of Technology, Ivy, Invesco, Redscout, Gympass, Aircall, Nautilus Labs, The City University of New York, and many others.

18. BCC's first show was produced by none other than Bowen Yang, one of the current members of the famed late-night comedy show *Saturday Night Live*. In fact, ever since its doors opened, countless notable performers have graced BCC's stage. A representative and non-exhaustive list of such A-list comedic acts can be found at www.brooklyncc.com/performers.

19. Despite the severe disruption the Covid-19 pandemic had on live performances everywhere, BCC never once ceased operations. In fact, during the height of the pandemic when all physical venues were mandated to close their doors in New York City, BCC kept its talent paid and performing through various partnerships with up to six livestream performances a week via TVCO, an online collaborative entertainment platform that features live shows with live audience engagement.

20. BCC put on shows through TVCO until January 2021, during which time BCC partnered with Bramble (another virtual platform for hosting performances with an audience that

is able to engage) to host their live performances. In fact, on March 9, 2021, *The New York Times* referenced BCC's partnership with Bramble in an article by Jason Zinoman discussing engagement in comedy and theater during the age of a pandemic, a copy of which is annexed hereto and made a part hereof as Exhibit B.

21. As soon as New York City restrictions on in-person venues were lifted, BCC reopened its doors. Since that time, BCC has continuously featured roughly 19 live performances a week at its BROOKLYN COMEDY COLLECTIVE venue at 167 Graham Avenue, Brooklyn, New York 11206. BCC is likely to increase to 20 live performances a week as soon as October of 2022.

22. At the personal request of Brooklyn Borough President Antonio Reynoso, BCC produced a show for the post-COVID reopening of the Brooklyn Borough Hall. No other comedy venue, nor any other producers, were asked to take part in this event, which evidences BCC's significant notoriety in Brooklyn as well as its respect in the community.

23. In December 2022, BCC is planning to produce and host an event called "Pitchfest," where BCC will connect writers with industry professionals through live shows. The event is slated to be co-produced by the highly-esteemed Sony Pictures Entertainment producer, Daniel Cramer.

24. From July 8 – 10, BCC produced and hosted a weekend event called the "Fun & Dumb Improv Festival" (FAD) which featured over 300 performers, including A-list talent, and 80 original improv shows with comedians travelling from as far away as Berlin to perform. The event garnered significant reception from multiple news sources, such as *The New York Times* and *Brooklyn Mag*, as further referenced in Section 27 below.

25. BCC owns the domain name www.brooklyncc.com and operates the website linked thereto. A copy of the home page is annexed hereto and made a part hereof as Exhibit C. Since going live, the [<www.brooklyncc.com>](http://www.brooklyncc.com) website has attracted over 267,000 visitors. BCC also owns and controls the Instagram account @comedybrooklyn (5,123 followers), the Twitter account @comedybrooklyn (1,459 followers), and the Eventbrite account Brooklyn Comedy Collective (2,275 followers).

26. BCC markets its services on multiple channels and through various sources, including without limitation:

- *Eventbrite*;
- *Coursehourse.com*;
- *Broadway World*;
- *City Guide NYC*; and
- *DoNYC*.

27. BCC has garnered significant unsolicited and favorable media in newspapers and media publications well-known and relevant to its business and community. A representative and non-exhaustive list is as follows:

- *Time Out New York*, one of the world's most famous publications for city-specific events and entertainment reviews aptly commented on BCC: "Some of the most talented . . . members of NYC's improv elite gather [here] . . ." (TV Dinner, *Time Out New York*).
- *The Brooklyn Vegan* called BCC "wonderfully eccentric" and claimed that a showing with Conner O'Malley (from Late Night With Seth Meyers) and Carmen Christopher (from The Chris Gethard Show) was "bound to be a memorable night

of weirdness” (Arielle Gordon, Comedy Roundup (4/30): John Mulaney, Hasan Minhaj, Carol Burnett, and more, *Brooklyn Vegan*, April 30, 2018).

- *The New York Times* has notably covered BCC’s foray into livestreaming event, expressing that digital comedy acts “didn’t capture what an actual one feels like, but it provided some compensatory pleasures” (Jason Zinoman, I Miss Being Part of an Audience, *The New York Time*, March 9, 2021).
- *The New York Times* included BCC in its piece on the new wave of improv comedy theaters in New York City (Jason Zinoman, A New Improv Theater Tries to Be the Anti-U.C.B. Is That a Trap, Too?, *The New York Time*, August 4, 2021).
- In its article entitled “Free Things to Do in New York, Every Day of the Week,” *The New York Times* plugged BCC by stating “Filling the gap the Upright Citizens Brigade left open when it shuttered in 2020, the Brooklyn Comedy Collective offers an opportunity every Tuesday at 8:30 p.m. for amateur comedians looking to hone their craft alongside pros” (Melissa Smith, Free Things to Do in New York, Every Day of the Week, *The New York Times*, July 19, 2022).
- *The New York Times* mentioned BCC by name in its July 6, 2022 article entitled “What to Do in New York City in July,” published online and in print, focusing on BCC’s July 2022 Fun & Dumb Improv Festival and emphasizing that the weekend event “plays host to . . . more than 80 improv comedy troupes from around the world.” The article also referenced BCC’s weekend improv classes administered at its training center. (Sean L. McCarthy, What to Do in New York City in July, *The New York Times*, July 6, 2022).

- *Brooklyn Mag* also published an article advertising BCC's July 2022 Fun & Dumb Improv Festival, mentioning that BCC was hosting stars such as "Jeff Hiller from HBO's "Somebody Somewhere" and Amber Ruffin from her self-titled show on Peacock." (Joshua Encinias, 12 Things to Do This Weekend: Vic Mensa Plays Prospect Park, The Giglio Returns, *Brooklyn Mag*, July 7, 2022).
- In an article and standalone video feature entirely dedicated to BCC, *News 12 Brooklyn* said that "A Brooklyn comedy club is finding new ways to keep the laughs coming at a time when in-person performances have been mostly restricted" (A Brooklyn comedy club is finding new ways to keep the laughs coming at a time when in-person performances have been mostly restricted, *News 12 Brooklyn*, April 20, 2021).

Copies of the above media references are annexed hereto and made a part hereof as Collective Exhibit D.

28. BCC's business has garnered significant recognition by the consuming public, as evidenced on extensively positive reviews associating the BROOKLYN COMEDY COLLECTIVE Marks in connection with the BCC Comedy Services, including, *inter alia*:

- BCC's Testimonial Page – <https://www.brooklyncc.com/testimonials>;
- Yelp – <https://www.yelp.com/biz/brooklyn-comedy-collective-bcc-brooklyn-4>;
- Facebook – <https://www.facebook.com/comedybrooklyn/>; and
- Google Maps – <https://g.page/ComedyBrooklyn?share>.

Copies of the above media references are annexed hereto and made a part hereof as Collective Exhibit E.

29. Upon information and belief, until the commencement of OMH's infringing use of the BROOKLYN COMEDY CLUB Mark on or about December 2019, BCC was the only permanent brick & mortar comedy venue in Brooklyn having the words "BROOKLYN" and "COMEDY" in its name.

30. BCC has built up and now owns extremely valuable goodwill that is symbolized by its distinctive and well-known BROOKLYN COMEDY COLLECTIVE Marks. As a result of its widespread, continuous, and exclusive use of the BROOKLYN COMEDY COLLECTIVE Marks in connection with BCC's Comedy Services since February 2018, the mark enjoys wide public association with BCC and has come to be recognized widely and favorably by the public in New York City and its environs as an indicator of one of the New York City's most innovative and up-and-coming comedy venues. The general public has come to associate the BROOKLYN COMEDY COLLECTIVE Marks exclusively with BCC. As such, the BROOKLYN COMEDY COLLECTIVE Marks have acquired distinctiveness and secondary meaning in the minds of the consuming public and the trade.

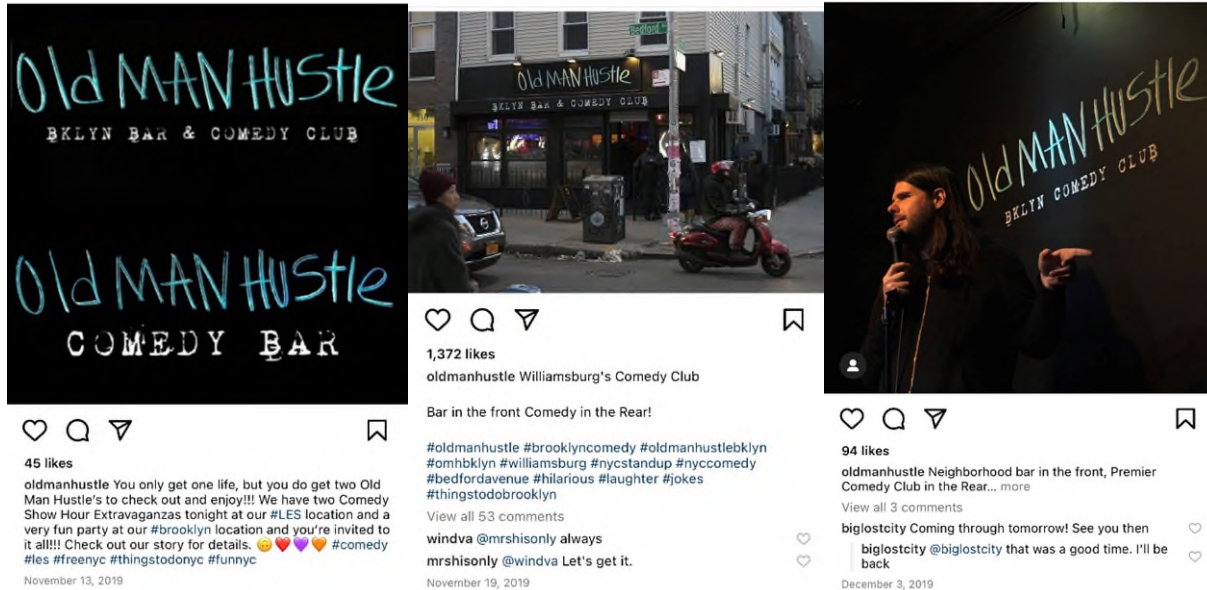
II. DEFENDANTS' WILLFUL INFRINGING ACTS AND CONDUCT

31. Upon information and belief, on or about September of 2013, OMH opened a conventional bar and comedy club named "Old Man Hustle," located at 39 Essex St, New York, NY 10002 on the Lower East Side of New York City. This Lower East Side location has always been called "Old Man Hustle" since its opening and remains so as of the date hereof.

32. Nearly two (2) years following BCC's opening in Brooklyn, OMH opened its second bar and comedy club location on or about December of 2019, at 308 Bedford Avenue, Brooklyn, NY 11249, just a five (5) minute walk from BCC's then-location on North 3rd Street.

33. Upon opening OMH's Brooklyn location in 2019, the bar and comedy club was named "Old Man Hustle" as evidenced by the Brooklyn Vegan article, documenting its grand opening, entitled, "Comedy club Old Man Hustle opened in former Videology space in Williamsburg" (Bill Pearis, Comedy club Old Man Hustle opened in former Videology space in Williamsburg, *Brooklyn Vegan*, December 4, 2019). The article clearly displays OMH's Brooklyn location facade emphasizing the "Old Man Hustle" name, with "BKLYN BAR & COMEDY CLUB" portrayed in a secondary and supplementary role, beneath the stylized OLD MAN HUSTLE logo. A copy of the *Brooklyn Vegan* article is annexed hereto and made a part hereof as Exhibit F.

34. In fact, OMH's Instagram posts at the time further evidence that the Brooklyn location was originally named "Old Man Hustle." Screenshots of the OMH's Instagram posts from November 13 to December 3, 2019 (pictured below) show i) OMH's own comparison of venue names between OMH's Lower East Side and Brooklyn locations, ii) OMH's Brooklyn location bar and club façade, and iii) OMH's Brooklyn venue stage backdrop.



35. In December 2019, there were no other comedy venues in the vicinity of BCC. Given how close the BCC venue was to OMH in Brooklyn, and considering that BCC was putting on shows every Tuesday through Sunday night since February 2018, it is hard to imagine that OMH would not have known about the BROOKLYN COMEDY COLLECTIVE and its comedy shows.

36. Despite their existing business and naming practice of calling their bar and club locations "Old Man Hustle," and despite OMH's likely knowledge of BCC's existence and name, sometime on or around March 2021, OMH changed the name of its Brooklyn location from "Old Man Hustle" to "Bklyn Comedy Club" (the same name as BCC, except switching "COLLECTIVE" with "CLUB"). This intentional decision to change the branding of OMH's Brooklyn location is evidenced by its Instagram post from March 24, 2021, which featured the caption "Old Man Hustle BKLYN Comedy Club is now @brklyncomedyclub[.] Same great space, slightly different name." OMH posted another Instagram photo on April 16, 2021 evidencing that it changed its stage backdrop from its former "Old Man Hustle" logo to "BKLYN COMEDY

Club” with “Old Man Hustle” blending into the background in monochromatic mouse-print, in the corner. The foregoing Instagram posts are represented, below:



37. Even a modicum of due diligence by Defendants would have disclosed the existence of the comedy venue the BROOKLYN COMEDY COLLECTIVE. That Defendants adopted the name BKLYN COMEDY CLUB evidences an attempt to rip off the goodwill of, and association with, BCC’s name and business in a callous disregard of BCC’s prior rights in the BROOKLYN COMEDY COLLECTIVE Marks.

38. Since its official shift in names to BKLYN COMEDY CLUB, OMH has made countless efforts to further benefit off the goodwill of the BROOKLYN COMEDY COLLECTIVE Marks. The marquee sign above OMH’s comedy club entrance features only the name “BKLYN COMEDY Club” without any mention of “Old Man Hustle.” A photograph of the aforementioned signage is displayed, below:



39. In February of 2022, OMH posted a sign on a window of its facade emphasizing the BCC letters in the name BKLYN COMEDY CLUB in an attempt to trade off on BCC's registered New York State rights and common law rights in the BCC mark for the BCC Comedy Services.



40. On July 1, 2022, OMH posted an additional marquee sign (pictured below) below its "BKLYN COMEDY Club" signage. Nowhere on, or in proximity to, these signs does OMH reference the "Old Man Hustle" name. This clearly demonstrates that OMH is transitioning away from its "BKLYN COMEDY Club" square logo with the "Old Man Hustle" house mark in the bottom right.



41. Despite the nearly identical names between the two businesses offering comedy show services, their physical proximity to each other, and their significant overlap in customer demographics, OMH's comedy club is not associated, affiliated, or connected with BCC, or licensed, authorized, sponsored, endorsed, or approved by BCC in any way.

42. Both BCC and Defendants' comedy show services target the same consumers, and BCC and OMH are operating through the exact same channels of trade, namely, comedy venues operating within blocks of each other that advertise and promote their comedy shows on their respective websites, through search engines and Google Ads, as well as through their respective social media platforms.

43. OMH's use of the nearly identical and confusingly similar BROOKLYN COMEDY CLUB Mark is likely to, and already has, deceived, confused, and misled actual

customers before, during, and/or after purchasing tickets, into believing that OMH is somehow authorized, connected, or associated with BCC, which it is not.

44. OMH's BROOKLYN COMEDY CLUB Mark is virtually identical to BCC's BROOKLYN COMEDY COLLECTIVE Marks, and is used for the identical comedy show services. That OMH's mark uses the well-recognized abbreviation "BKLYN" instead of "BROOKLYN" is a distinction without a difference; the two words are phonetically identical and visually highly similar. Both marks also incorporate the word "Comedy" as the center element of the mark and the third element of the marks both start with the letters "CO."

45. While BCC's BROOKLYN COMEDY COLLECTIVE Marks employ the word "Collective," and OMH's BROOKLYN COMEDY CLUB Mark utilizes the word "Club," given the identity and dominance of the first two elements—BROOKLYN and COMEDY, the third element is of lesser importance as the words "BROOKLYN COMEDY." Not only is Defendants' name and mark BKLYN COMEDY CLUB highly similar in sight, sound and meaning to BCC's BROOKLYN COMEDY COLLECTIVE mark, but its logo is also highly similar in look and feel. As shown below, the BCC logo employs a graphic format where each element of the mark is stacked on top of another element, featuring white text atop a black background. OMH utilizes an identical graphic and stylistic format which enhances the likelihood of consumer confusion between the marks.

BKLYN COMEDY CLUB



BROOKLYN COMEDY COLLECTIVE



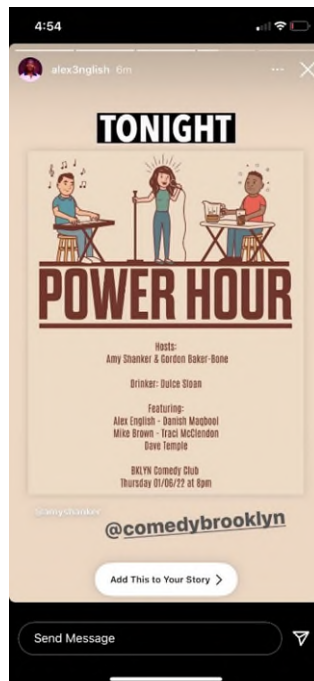
46. There have already been numerous instances of actual confusion arising from Defendants' use of the BROOKLYN COMEDY CLUB Mark. A representative and non-exhaustive list of such instances of confusion is as follows:

- November 13, 2021 – Customer wished to purchase tickets to BROOKLYN COMEDY CLUB, but called BROOKLYN COMEDY COLLECTIVE by mistake.
- November 17, 2021 – Customer mistagged BROOKLYN COMEDY COLLECTIVE instead of BROOKLYN COMEDY CLUB on Instagram.



- November 21, 2021 – Customer inquired about 10pm show, but realized after speaking that they were trying to purchase tickets to BROOKLYN COMEDY CLUB, and not BROOKLYN COMEDY COLLECTIVE.

- November 29, 2021 – Three (3) separate phone calls for Monday night show at BROOKLYN COMEDY CLUB, mistakenly called BROOKLYN COMEDY COLLECTIVE for tickets.
- January 6, 2022 – Current *Saturday Night Live* writer Alex English mistagged BROOKLYN COMEDY COLLECTIVE Instagram account to a post intended to have tagged BROOKLYN COMEDY CLUB.



- February 18, 2022 – Customer called BROOKLYN COMEDY COLLECTIVE inquiring about a Monday night show, intending to call BROOKLYN COMEDY CLUB. Customer explained phone number to BROOKLYN COMEDY CLUB wasn't operational, so they called BROOKLYN COMEDY COLLECTIVE in case they were affiliated/connected.
- March 14, 2022 – Customer called BROOKLYN COMEDY COLLECTIVE mistakenly, attempting to contact BROOKLYN COMEDY CLUB.

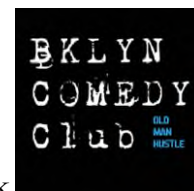
- April 14, 2022 – Customer emailed BROOKLYN COMEDY COLLECTIVE stating “I will come check you out at the Brooklyn Comedy Club one of these days! Will be a nice outing for my husband and I 😊.”
- May 3, 2022 – Customer emailed BROOKLYN COMEDY COLLECTIVE asking “Are you the Brooklyn comedy club or Brooklyn comedy collective?”
- June 2022 – A person instant messaged BCC on Instagram, forwarding an article from the NY Post that the sender believed was referencing BCC. The sender then corrected their message by admitting they were confused by the similarity in names, and that the article had referenced OMH.
- June 17, 2022 – A comedian mistakenly went to BCC’s venue when they were scheduled to perform at OMH.
- June 18, 2022 – Multiple people were heard leaving a sold-out BCC show saying how they enjoyed the “Brooklyn Comedy Club;” customers surprised when they were corrected and learned that two similarly named comedy venues were located so closely together.
- June 26, 2022 – Customer of OMH mistakenly tagged BCC’s Instagram profile on its story referring to a show they attended at OMH.
- August 5, 2022 – Customer of OMH mistakenly published a one-star review on the Yelp page of BCC, complaining of double-charging and other shady business practices; however, the customer confused BCC for OMH, and the review was intended for OMH. Following a clarifying comment to this review by Markle on the same day, the customer took down the misdirected review from BCC’s Yelp page and republished it to OMH’s Yelp page on August 6, 2022.

- The foregoing instances of actual confusion are just a few of the instances of which BCC has become aware that demonstrate that consumers have been deceived by the confusingly nearly identical name of BROOKLYN COMEDY CLUB to BROOKLYN COMEDY COLLECTIVE, and have inquired to purchase, and have actually purchased, tickets for one venue when intending the other.

47. On October 12, 2021, Markle, on behalf of BCC, sent OMH an email advising it of BCC's trademark rights in the BROOKLYN COMEDY COLLECTIVE Marks for the BCC Comedy Services, and asked OMH to discontinue the use of the BROOKLYN COMEDY CLUB Mark. A copy of the October 12, 2021 email is annexed hereto and made a part hereof as Exhibit G. OMH never responded to this email.

48. BCC called Defendant Farrell on November 29, 2021, to complain about rampant instances of actual consumer confusion and to renew BCC's request that OMH discontinue the use of the BROOKLYN COMEDY CLUB Mark. In response, Farrell curtly refused to change its name in the slightest.

49. Following BCC's attempts to persuade Defendants to change the name and mark for their comedy business, Defendant OMHBROOKLYN sought to outsmart BCC and gain the upper hand by filing a trademark application with the U.S. Patent and Trademark Office



(“USPTO”) on October 21, 2021, Serial Number 97/086,405 for the mark covering “comedy club services” in Class 41 (the “**405 Application**”). A copy of the ‘405 Application is annexed hereto and made a part hereof as Exhibit H. Although the ‘405 Application is in a stylized form containing the subname “OLD MAN HUSTLE,” which appears in monochromatic mouse

print-size font, the overwhelmingly dominant element of Defendants' infringing mark is BROOKLYN COMEDY CLUB, which is prominently used throughout Defendants' marketing efforts, on its Instagram and Twitter social media accounts, and most notably, on its primary street-side signage.

50. One January 27, 2022, BCC, through its legal counsel, sent a demand letter to OMH, asserting its prior-existing rights in the BROOKLYN COMEDY COLLECTIVE Marks, outlining the infringing nature of the BROOKLYN COMEDY CLUB Mark, and requesting the discontinuance of the infringing mark for an alternative, non-infringing name. A copy of the January 27, 2022 demand letter is annexed hereto and made a part hereof as Exhibit I. Legal counsel for Plaintiff and Defendant exchanged subsequent emails and calls following the January 27, 2022 email, however OMH refused to discontinue the use of the BROOKLYN COMEDY CLUB Mark.

51. It is abundantly clear from Defendants' infringing acts and conduct that OMH willfully intended to trade on the goodwill and reputation established by BCC in its BROOKLYN COMEDY COLLECTIVE Marks.

52. Upon information and belief, notwithstanding Defendants' prior knowledge of Plaintiff's rights in the BROOKLYN COMEDY COLLECTIVE Marks for a venue hosting comedy shows, Defendants proceeded to adopt the BROOKLYN COMEDY CLUB Mark for a directly competing comedy show venue also located in Brooklyn within blocks of Plaintiff's venue. Upon information and belief, OMH's conduct has been deliberate and has demonstrated willful, intentional, and callous disregard of BCC's rights.

53. OMH's actions have been, and unless enjoined will continue to be, in violation of federal and state law governing trademark infringement and unfair competition and are causing

immediate and irreparable harm to BCC, including causing actual confusion, loss of control over its reputation, and loss of goodwill.

COUNT I

TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(A))

54. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-53 above as though fully set forth herein.

55. Defendants' use of the BROOKLYN COMEDY CLUB Mark, without the authorization or consent of Plaintiff, in connection with its comedy club services, constitutes a use in commerce that is likely to cause confusion and mistake and to deceive consumers as to the source or origin of Plaintiff's services such that consumer may believe that Defendants' comedy club, website, and social media marketing are sponsored by, endorsed by, approved by, licensed by, authorized by, or in some way affiliated or connected with Plaintiff, when they are not.

56. By virtue of the foregoing, Defendant's acts and conduct are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

57. Upon information and believe, Defendants have intentionally and knowingly adopted and used a name, mark, or false designation of origin likely to cause confusion in the marketplace as to the source, origin, or sponsorship of the goods and services offered by Defendant.

58. Defendants' acts and conduct are causing and continue to cause Plaintiff irreparable harm in the nature of loss of control over its reputation and loss of substantial consumer goodwill. The irreparable harm to Plaintiff will continue, without any adequate remedy at law, unless and until Defendants' unlawful conduct is enjoined by this Court.

COUNT II

**NEW YORK STATE
TRADEMARK INFRINGEMENT (N.Y. Gen. Bus. Law § 360-K)**

59. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-53 above as though fully set forth herein.

60. Plaintiff is the owner of a New York State trademark registration for the mark BROOKLYN COMEDY COLLECTIVE, Registration No. S25396, registered November 16, 2021, based on first use of the mark on February 5, 2018, which registration covers “a comedy club/theater and a school with year-round live shows and classes that trains aspiring comedians in the art of comedy.”

61. Based on BCC’s significant advertising and sales of BCC’s Comedy Services under the mark BROOKLYN COMEDY COLLECTIVE since February of 2018, and the substantial favorable reviews and press garnered by those services, the mark is strong and has acquired secondary meaning so that the BBC Comedy Services offered under the mark BROOKLYN COMEDY COLLECTIVE are immediately associated by consumers as coming from Plaintiff.

62. Defendants’ nearly identical mark BROOKLYN COMEDY CLUB for the identical services offered at its club in Brooklyn, New York, literally blocks away from Plaintiff’s venue constitutes trademark infringement.

63. Defendants’ acts and conduct are intended to exploit the goodwill and reputation associated with BBC’s BROOKLYN COMEDY COLLECTIVE mark.

64. Defendants’ acts and conduct as aforesaid create the false and misleading impression that Defendants are sanctioned or authorized by BCC to use the BROOKLYN COMEDY COLLECTIVE mark for its directly competing comedy club services when Defendants are not so authorized.

65. Defendants' use of the BROOKLYN COMEDY CLUB Mark, without the authorization or consent of Plaintiff, in connection with its comedy club services, constitutes a use in New York commerce that is likely to cause confusion and mistake and to deceive consumers as to the source or origin of Plaintiff's services such that consumer may believe that Defendant's club, services, website, and social media marketing are sponsored by, endorsed by, approved by, licensed by, authorized by, or affiliated or connected with Plaintiff.

66. By virtue of the foregoing, Defendants' acts are in violation of N.Y. Gen. Bus. Law § 360-k.

67. Upon information and believe, Defendants have intentionally and knowingly adopted and used the BROOKLYN COMEDY CLUB Mark to cause confusion in the marketplace as to the source, origin, or sponsorship of Defendants' directly competing comedy club services.

68. Defendants' acts and conduct are causing and continue to cause Plaintiff irreparable harm in the nature of loss of control over its reputation and loss of substantial consumer goodwill. The irreparable harm to Plaintiff will continue, without any adequate remedy at law, unless and until Defendant's unlawful conduct is enjoined by this Court.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

69. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-53 above as though fully set forth herein.

70. Through its prior and continuous use of its BROOKLYN COMEDY COLLECTIVE Marks in commerce for the BCC Comedy Services, Plaintiff's BROOKLYN COMEDY COLLECTIVE Marks have become well-known, and the consuming public has come to exclusive associate the marks with BCC.

71. Through its prior and continuous use of its BROOKLYN COMEDY COLLECTIVE Marks in commerce, BCC enjoys exclusive common law rights in its BROOKLYN COMEDY COLLECTIVE Marks.

72. Defendants' use of the BROOKLYN COMEDY CLUB Mark that is virtually identical to BCC's BROOKLYN COMEDY COLLECTIVE Marks, for directly competing comedy club services, is without permission, license or other authorization from BCC.

73. Defendants, with knowledge and intentional disregard of BCC's rights, continue to advertise, promote, and sell tickets for comedy shows at its venue in Brooklyn, New York under a name and mark so similar to BCC's BROOKLYN COMEDY COLLECTIVE Marks that substantial consumer confusion as to the source of Defendants' comedy club services has arisen in the short time Defendants' comedy club has been operating, and such confusion will continue to exist so long as Defendants continue to operate their comedy club under the infringing name and mark.

74. Defendants' acts and conduct as alleged herein constitute common law trademark infringement and unfair competition, and have already caused BCC irreparable damage and will, unless enjoined, continue to so damage BCC, which has no adequate remedy at law.

75. Upon information and belief, Defendants committed the acts and conduct alleged herein knowingly, willfully, wantonly, maliciously, and in conscious disregard of BCC's prior rights in the BROOKLYN COMEDY COLLECTIVE Marks, thereby entitling BCC to exemplary and punitive damages pursuant to the common law of the State of New York in an amount sufficient to punish, deter, and make an example of Defendants.

76. Defendant's acts are causing and continue to cause Plaintiff irreparable harm in the nature of loss of control over its reputation, and loss of substantial consumer goodwill. This

irreparable harm to Plaintiff will continue, without any adequate remedy at law, unless and until Defendant's unlawful conduct is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that:

1. That Defendant, its officers, directors, agents, servants, employees and attorneys and any and all persons in active concert or participation with Defendant who receives actual notice hereof by personal service or otherwise, be preliminarily and permanently restrained and enjoined from:

- a. Imitating, copying or making unauthorized use of the Plaintiff's trademarks, trade name or domain name either standing alone or as part of any other name or mark;
- b. Using "BKLYN COMEDY CLUB," "BROOKLYN COMEDY CLUB," "BROOKLYN COMEDY COLLECTIVE," or any reproduction, counterfeit, copy, colorable imitation thereof, or any words confusingly similar, as a trademark, trade name, domain name or otherwise in connection with the advertising, display, sale, offering for sale or distribution of any services in any medium, including but not limited to the Internet and television, in such a manner that is likely to cause confusion or mistake or to deceive customers or the public or give the impression that Defendant or its products or services originate with, are affiliated with, are sponsored by, approved by or in any way connected to Plaintiff;
- c. Using as a name or mark "BKLYN COMEDY CLUB," "BROOKLYN COMEDY CLUB," "BROOKLYN COMEDY COLLECTIVE," or any variation thereon;
- d. Using any name, mark or false designation of origin, or false description, or performing any act which can, or is likely to, lead members of the public to believe

that any service or product provided by Defendant is in any manner associated or connected with Plaintiff or is sold, licensed, sponsored, approved or authorized by Plaintiff;

- e. Using “BKLYN COMEDY CLUB,” “BROOKLYN COMEDY CLUB,” or “BROOKLYN COMEDY COLLECTIVE” as a metatag or in any hidden data, including but not limited to, in conjunction with any internet searching tool;
- f. Engaging in any activity constituting unfair competition with Plaintiff, or constituting an infringement of Plaintiff’s trademarks or trade name; and
- g. Registering or applying to register as a trademark, service mark, trade name, Internet domain name or any other source identifier or symbol of origin, “BKLYN COMEDY CLUB,” “BROOKLYN COMEDY CLUB,” “BROOKLYN COMEDY COLLECTIVE,” or any other mark or name that infringes on or is likely to be confused with Plaintiff’s trademarks or trade name.
- h. That Defendant be directed to file with this Court and serve upon Plaintiff within thirty (30) days after service upon Defendant of any injunction herein, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

2. That Defendant immediately cease the use of, and take all such actions and file all such required filings with the U.S. Patent and Trademark Office to expressly abandon the U.S. Trademark Application Serial Number 97/086,405.

3. That Defendant and all others in active concert or participation with Defendant take affirmative steps to dispel any false impression or confusion that has been created by Defendant’s use of the BROOKLYN COMEDY CLUB Mark as a trade name and trademark.

4. That Defendant immediately destroy any and all advertising, promotion, or marketing materials within their possession, custody or control that use the BROOKLYN COMEDY CLUB Mark.

5. That Defendants account to Plaintiff for all Defendant's profits, gains and sums arising from the acts of infringement and unfair competition herein alleged in an amount to be determined at trial but believed to be in excess of \$150,000.00.

6. That, pursuant to 15 U.S.C. § 1117(a) and the laws of New York, Plaintiff be awarded attorneys' fees, Defendant's profits, and damages suffered by Plaintiff.

7. That, pursuant to 15 U.S.C. § 1117(a), Plaintiff be awarded treble damages arising from Defendant's intentional and willful conduct.

8. That, as provided for under the laws of New York, Plaintiff be awarded punitive damages arising from Defendant's intentional and willful conduct.

9. That Plaintiff be granted such other and further relief as this Court may deem just and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury for all issues and claims properly triable thereby.

Dated: August 12, 2022
New York, New York

Respectfully submitted,

FOLEY & LARDNER LLP

By: /s/ Robert S. Weisbein

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